



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,130	11/14/2003	Yoshinori Tomita	450100-02029.1	9561

7590 11/17/2008
FROMMER LAWRENCE & HAUG, LLP.
745 FIFTH AVENUE, 10TH FLOOR
NEW YORK, NY 10151

EXAMINER

WERNER, DAVID N

ART UNIT	PAPER NUMBER
----------	--------------

2621

MAIL DATE	DELIVERY MODE
-----------	---------------

11/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/713,130	Applicant(s) TOMITA ET AL.	
	Examiner David N. Werner	Art Unit 2621	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): objection to specification on informalities.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 11,12,14-17,19-24,35,49-53,55-58,60-65 and 67-70.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Mehrdad Dastouri/
 Supervisory Patent Examiner, Art Unit 2621

/D. N. W./
 Examiner, Art Unit 2621

Continuation of 11. does NOT place the application in condition for allowance because: the Hashimoto et al. reference discloses "the combination of a still image with audio data" (column 10: line 2). Both the audio and still image may be captured at the same time when a user presses shutter release button 124 (column 9: lines 47-50). Applicant's assertions that Hashimoto et al. does not teach "an apparatus and method which can simultaneously record a still picture and an audio signal" (pg. 20) is incorrect. This mode is considered the same as mode 2(a) in the arguments. Hashimoto et al. may also operate in a mode that produces a series of "successive images...to generate moving images" (column 10: lines 3-4). Since these moving images are just a set of still images, producing a series of successive images in Hashimoto et al. is the same as mode 2(b) in the arguments. Since the motion images are a series of still images, capturing a moving image in Hashimoto et al. both captures still image data (each of the frames) and moving picture data (the series of frames linked in the relation file). Lastly, Hashimoto et al. discloses a mode in which "just a still image" is recorded (columns 1-2). This is the same as mode 1 in the arguments.

Regarding the argument that Hashimoto et al. does not teach three encoders and a picture generator in claim 69, it appears that the claimed "third encoder" is not an "encoder" per se that captures audio or video data. Image data compression unit 12 which produces compressed . Looking at figure 8, image data compression/expansion circuit 12 which encodes images is the claimed "first encoder" and "picture generator" in an MPEG video mode (column 6: lines 63-66). Audio data compression/expansion circuit 3 which produces compressed audio data is the claimed "second encoder". FIFO 13 which combines video and audio files from the two compression/expansion circuits is the claimed "third encoder".

Regarding the arguments against Kato and ISO, applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Considering the above, all rejections are sustained.